

No. 15118

United States
Court of Appeals
for the Ninth Circuit

MILDRED REED WOOD, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California,
Southern Division

FILE

JUL -6 195

PAUL P. O'BRIEN, C

No. 15118

United States
Court of Appeals
for the Ninth Circuit

MILDRED REED WOOD, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	7
Appeal:	
Certificate of Clerk to Transcript of Record on	23
Designation of Record on (DC)	20
Motion and Order for Extension of Time for	
Filing Record on	22
Notice of	19
Statement of Points on (DC)	19
Stipulation Adopting Statement of Points and	
Designation of Record on (USCA)	25
Certificate of Clerk to Transcript of Record	23
Complaint	3
Designation of Record on Appeal (DC)	20
Findings of Fact and Conclusions of Law	14
Judgment	17
Motion and Order for Extension of Time	22
Names and Addresses of Attorneys	1

ii.

Notice of Appeal.....	19
Pre Trial Order.....	11
Statement of Points on Appeal (DC).....	19
Stipulation Adopting Statement of Points and Designation of Record (USCA).....	25
Supplemental Stipulation of Facts.....	13

NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

CHARLES ELWYN KARPINSKI,

640 San Diego Trust & Savings Building,
San Diego, California

Attorneys for Appellee:

LAUGHLIN E. WATERS,

U. S. Attorney,

MAX F. DEUTZ,

Asst. U. S. Attorney,

Chief of Civil Division

ANDREW J. DAVIS,

Asst. U. S. Attorney,

600 Federal Building,

Los Angeles 12, California [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

United States District Court, Southern District
of California, Southern Division

No. 1656-SD

MILDRED REED WOOD, Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Plaintiff complains of defendant, and for cause of
action alleges:

I.

That plaintiff is a resident of the Southern District of California, Southern Division; said action is brought under the National Life Insurance Act of 1940, as amended; that at all times since January 6, 1948, plaintiff has been the duly designated beneficiary under the policy mentioned hereinafter.

II.

That on or about the 1st day of June, 1943, Lawrence C. Reed applied for and was granted National Service Life Insurance Policy #N 10 815 106 in the amount of \$10,000.00.

III.

That from the 1st day of June, 1943, to and including the 31st day of December, 1947, said Lawrence C. Reed made premium payments by means of an allotment deduction from his service pay check.

IV.

That on or about the 31st day of December, 1947, said [2] Lawrence C. Reed was retired from the United States Army at the post of **Corozal, Canal Zone**.

V.

That upon Lawrence C. Reed's retirement, he authorized the United States of America to deduct the premiums for said National Service Life Insurance Policy #N 10 815 106 from his retirement pay.

VI.

That due to the negligence of defendant or its agents, acting in the course and scope of their agency and employment, no deductions from said Lawrence C. Reed's retirement pay were made.

VII.

That on or about the 6th day of February, 1949, Lawrence C. Reed died in the Canal Zone.

VIII.

That at some time immediately subsequent to the 6th day of February, 1949, plaintiff duly made claim in writing to the United States of America for payment of death benefits under the policy of insurance, #N 10 815 106 and submitted evidence establishing the right to such payment. That plaintiff's claim was disallowed by the Veterans Administration on or about the 4th day of August, 1949; and on the 31st day of October, 1950, the Board of

Veterans Appeals denied the appeal from the ruling of the Veterans Administration.

IX.

That a disagreement exists between plaintiff and the Veterans Administration as to whether a contract of insurance was in force at the time of death of Lawrence C. Reed on the life of said Lawrence C. Reed.

X.

That plaintiff has been forced to employ attorneys to bring this action for her and to prosecute claim to judgment, and such attorneys are entitled to reasonable fees for their services. [3]

As and For a Second, Separate and Distinct Cause of Action, plaintiff complains of defendant and for cause of action alleges:

I.

Plaintiff hereby incorporates paragraphs I through V, VII, VIII and X of her first cause of action in this, her second cause of action, as fully as though set forth herein at length.

II.

That on or about the 31st day of December, 1947, said Lawrence C. Reed authorized deductions from his retirement pay to commence on the 31st day of January, 1948.

III.

That all conditions precedent to the maintenance of Policy #N 10 815 106 have been fulfilled.

As and For a Third, Separate and Distinct Cause of Action, plaintiff complains of defendant and for cause of action alleges:

I.

Plaintiff herewith incorporates Paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X of her first cause of action in this, her third cause of action, as fully as though set forth herein at length.

II.

That at all times subsequent to December 31, 1947, and prior to the 6th day of February, 1949, defendant, through its agents, servants and employees acting in the course and scope of their said agency and employment, acted in such a manner as to induce said Lawrence C. Reed to believe that insurance policy #N 10 815 106 was in full force and effect.

III.

That had Lawrence C. Reed been informed that said policy was not in effect, he would have had the right to reinstate it at any time prior to his death. [4]

IV.

That the acts of defendant's agents, servants and employees as set forth herein damaged the plaintiff in the sum of \$10,000.00.

Wherefore, plaintiff prays judgment:

1. The above-entitled court declare that plaintiff is entitled to the full benefits due under Policy

#N 10 815 106 in the sum of \$10,000.00 in accordance with the terms of said contract of insurance.

2. The above-entitled court determine that said contract of insurance was in full force and effect on the 16th day of February, 1949.

3. Or, in the alternative, that the above-entitled court determine that defendant is liable to plaintiff in the sum of \$10,000.00 by reason of the acts set forth above.

4. A reasonable fee be paid to plaintiff's attorneys for the prosecution of this action.

DAVID S. CASEY and

CHARLES ELWYN KARPINSKI,

/s/ By CHARLES ELWYN KARPINSKI,

Attorney for Plaintiff

[5]

Duly Verified. [6]

[Endorsed]: Filed Sept. 23, 1954.

[Title of District Court and Cause.]

ANSWER

In answer to plaintiff's Complaint on file herein, the defendant, United States of America, admits, denies and alleges as follows:

I.

The defendant admits the allegations contained in the first paragraph of plaintiff's First Cause of Action.

II.

The defendant admits the allegations contained in Paragraph II of the First Cause of Action.

III.

The defendant admits the allegations contained in Paragraph III of the plaintiff's First Cause of Action.

IV.

The defendant admits the allegations contained in Paragraph IV of the plaintiff's First Cause of Action. [7]

V.

The defendant denies the allegations contained in Paragraph V of plaintiff's First Cause of Action, and defendant alleges that it was never authorized by anyone to deduct premiums for National Service Life Insurance Policy No. N 10 815 106 from the retirement pay of Lawrence C. Reed.

VI.

The defendant denies generally and specifically each and every allegation contained in Paragraph VI of plaintiff's First Cause of Action, and alleges that National Service Life Insurance Policy No. N 10 815 106 lapsed for non-payment of premium due February 1, 1948.

VII.

The defendant admits the allegations contained in Paragraph VII of plaintiff's First Cause of Action.

VIII.

The defendant admits the allegations contained in Paragraph VIII of the plaintiff's First Cause of Action except that it denies that any evidence was submitted which established the plaintiff's rights to the proceeds of National Service Life Insurance Policy No. N 10 815 106.

IX.

The defendant admits the allegations contained in Paragraphs IX and X of plaintiff's First Cause of Action.

In Answer to Plaintiff's Second Cause of Action, the Defendant United States of America, Admits, Denies and Alleges as Follows:

I.

The defendant hereby incorporates its answers to Paragraphs I, II, III, IV, V, VII, VIII and X of plaintiff's First Cause of Action in this, Second Cause of Action, as fully as though set [8] forth herein at length.

II.

The defendant denies each and every allegation contained in Paragraphs II and III of plaintiff's Second Cause of Action.

In Answer to Plaintiff's Third Cause of Action, the Defendant United States of America, Admits, Denies and Alleges as Follows:

I.

Defendant hereby incorporates its answers to Paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X of plaintiff's First Cause of Action to this, Third Cause of Action, as fully as though set forth herein at length.

II.

The defendant denies each and every allegation contained in Paragraphs II, III, and IV of plaintiff's Third Cause of Action.

Wherefore, the defendant prays for judgment as follows:

1. That the plaintiff take nothing by her Complaint on file herein;
2. That the defendant be allowed its costs; and
3. For such other and further relief in the premises as may be meet and just.

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division

/s/ ANDREW J. DAVIS,
Assistant U. S. Attorney,

Attorneys for Defendant

[9]

Demand For Jury Trial

Comes Now the defendant, United States of America, and makes demand for jury trial herein by and through its attorneys.

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division

/s/ ANDREW J. DAVIS,
Assistant U. S. Attorney,

Attorneys for Defendant [10]

Affidavit of Service by Mail Attached. [11]

[Endorsed]: Filed March 1, 1955.

[Title of District Court and Cause.]

PRE TRIAL ORDER

The case has been set for trial July 26th at 10 A.M., at San Diego.

The parties will confer together and prepare a pre-trial stipulation, in substantially the following form:

Sec. 1. The admissions of fact from the pleadings, and such additional facts as the parties are able to agree to.

Sec. 2. A statement of the issues of fact and the

issues of law that remain to be tried. The court desires the parties to agree to these issues, if at all possible. If one party proposes an issue which the other party denies as an issue, it will have to be listed as the issue of fact or law to be tried. The court does not desire the parties to separately list their idea of the issues of law and fact.

Sec. 3. Will contain any miscellaneous stipulations entered into, and a list of the documentary evidence in the case, together with reservation of any particular objection which the party desires to make at the trial. The parties will exhibit their documentary evidence one to the other, and attempt as far as possible, to limit or waive their objections. [12]

Plaintiff will have the responsibility of preparing the pre trial stipulation, and it will contain a place for the court to sign and approve it.

Each party will prepare a trial memorandum, with emphasis on the unusual or important questions of law in the case.

The pre trial stipulation and the trial memorandums to be filed on or before Friday, July 15th, 1955.

Dated: June 6, 1955.

/s/ JAMES M. CARTER,

U. S. District Judge

[13]

[Endorsed]: Filed June 8, 1955.

[Title of District Court and Cause.]

SUPPLEMENTAL STIPULATION OF FACTS

It Is Hereby Stipulated by and between counsel for the respective parties hereto that the Stipulated Facts heretofore signed by the parties and filed with the Court shall be supplemented and corrected in that Fact No. 4 appearing on page 2 of the Stipulated Facts applies only to a Designation of Mildred Reed Wood as the beneficiary of a retirement and disability fund that Lawrence C. Reed had acquired under the jurisdiction of the Civil Service Commission. The Designation of Mildred Reed Wood as the beneficiary of such fund had nothing to do with, and was in no way connected with, any government life insurance and was not directed to the Veterans Administration.

Dated: This 25th day of August, 1955.

LAUGHLIN E. WATERS,

United States Attorney

MAX F. DEUTZ,

Asst. U. S. Attorney,

Chief of Civil Division

/s/ ANDREW J. DAVIS,

Assistant U. S. Attorney,

Attorneys for Defendant [31]

DAVID S. CASEY and

CHARLES ELWYN KARPINSKI,

/s/ By CHARLES ELWYN KARPINSKI,

Attorneys for Plaintiff [32]

[Endorsed]: Filed Aug. 30, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT and CONCLUSIONS OF LAW

The above entitled matter came on regularly for trial on July 26, 1955 before the Honorable Jacob Weinberger, Judge Presiding without a jury, plaintiff being represented by her attorney, Charles E. Karpinski, and the defendant being represented by its attorneys, Laughlin E. Waters, United States Attorney, Max F. Deutz and Andrew J. Davis by Andrew J. Davis, Assistant U. S. Attorneys, and on that date the matter being continued for further argument and submission which was had on September 16, 1955, and the Court, considering the evidence submitted and the arguments of counsel both written and oral, and being fully advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

The Court has jurisdiction over the within action and the parties pursuant to the National Service Life Insurance Act of 1940 as amended, (38 U.S. C.A. 445, 551, 817). [37]

II.

On June 1, 1943, while Lawrence C. Reed was in active service in the United States Army, he applied for and was issued National Service Life In-

surance Policy No. 10 815 106, which policy named as beneficiary the plaintiff, who was the sister of said Reed.

III.

During the period of said Reed's active service in the Army, the premiums for said policy were deducted by the United States from his active service pay, by a "Class N" allotment.

IV.

Lawrence C. Reed retired from active service in the United States Army on December 31, 1947.

V.

On December 31, 1947, the Army regulations then in force for regular Army personnel, a class into which Lawrence C. Reed belonged, were as follows:

"CFR Title 10-Army: War Department Section 308.10

(e) When a member of the regular Army is retired, he may, if he desires, continue Class E Allotments for commercial life insurance and also Class D & N Allotments. In such a case no action is necessary on the part of the allotter. If such Class E allotments or Class D or N allotments are to be discontinued, a WD AGO form 141 will be processed for each separate allotment."

VI.

At the time of his retirement, Lawrence C. Reed signed a form provided by the United States (Exhibit 1) entitled "Enlisted Record and Report of

Retirement". That in a space on said form headed "Insurance Notice", and opposite section [38] numbered "53" and opposite the words "Intention of Veteran to Continue Payment Deducted From Retirement Pay" there was typed an "X".

VII.

Subsequent to Lawrence C. Reed's retirement from the United States Army, he received his full retirement pay each month, and no deductions were made for payments of the premium on said insurance policy.

VIII.

Lawrence C. Reed died February 6, 1949.

IX.

Subsequent to the death of Lawrence C. Reed, the plaintiff duly made claim in writing to the defendant for the death benefits under the said life insurance policy. The plaintiff's claim was disallowed by the Veterans Administration, an agency of the defendant, on the 4th day of August, 1949, which decision was affirmed by the Board of Veterans Appeals on October 31, 1950.

Conclusions of Law

I.

The Court has jurisdiction over the subject matter of the action and of the respective parties.

II.

The insurance policy involved herein was in full

force and effect on the date of the retirement of Lawrence C. Reed from the United States Army, December 31, 1947.

III.

The said insurance policy lapsed because of non-payment of premiums due January 1, 1948, and at the time of the death of said Lawrence C. Reed, said policy was not in force. [39]

IV.

Judgment should be entered in favor of the defendant.

Dated this 18 day of November, 1955.

/s/ JACOB WEINBERGER,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1955. [40]

United States District Court, Southern District
of California, Southern Division

No. 1656-SD Civil

MILDRED REED WOOD,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The Court being fully advised in the premises, and having heretofore signed and filed its Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

That judgment be entered in favor of defendant and against the plaintiff dismissing plaintiff's complaint and denying the relief prayed for therein.

Dated: This 18th day of November, 1955.

/s/ JACOB WEINBERGER,
Judge, U. S. District Court.

Presented by:

LAUGHLIN E. WATERS,
United States Attorney.
MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division.

/s/ ANDREW J. DAVIS,
Assistant U. S. Attorney.
Attorneys for Defendant. [41]

Docketed and Entered Nov. 22, 1955.

[Endorsed]: Filed Nov. 18, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the United States of America and to Laughlin
E. Waters and Andrew J. Davis, its attorneys:

You and each of you will take notice that Mildred
Reed Wood, plaintiff above named, hereby appeals
to the United States Court of Appeals for the
Ninth Circuit from the judgment entered in this
action on the 18th day of November, 1955.

/s/ CHARLES ELWYN KARPINSKI,
Attorney for Plaintiff. [42]

Affidavits of Service Attached. [43-4]

[Endorsed]: Filed Jan. 18, 1956.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points on which Appellant will rely on ap-
peal are:

1. The Court erred in refusing to enter a verdict
for the plaintiff for the relief prayed.

2. The Court erred in adopting the conclusion
that under no circumstances could the United States
of America be found in effect to be estopped to pro-
test the non-payment of premiums when the fault

was due entirely to the negligence or error of the United States of America or its agents.

/s/ CHARLES ELWYN KARPINSKI,
Attorney for Plaintiff.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 18, 1956. [45]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75 (A) in the Federal Rules of Civil Procedure, the plaintiff appellant hereby designates for inclusion in the record of appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed January 17, 1956, the following portions of the records, proceedings and evidence in this action:

1. Complaint
2. Pre-trial Order
3. Answer
4. Pre-trial Stipulations
5. Stipulated Facts (a document) and Supplemental Stipulation
6. Summary of facts prepared by attorneys for defendant
7. Plaintiff's opening brief
8. Defendant's brief

9. Plaintiff's closing brief [47]

10. All documentary evidence introduced at the trial, particularly deceased's discharge, etc.

11. Judge's memorandum opinion

12. Findings of fact and conclusions of law

13. Plaintiff's objections to defendant's Findings of Fact and Conclusions of Law

14. Amended Findings of Fact and Conclusions of Law and Judgment.

It is hereby stipulated by and between the parties, by their respective counsel, Charles Elwyn Karpinski as counsel for plaintiff and appellant, and Laughlin Waters and Andrew J. Davis as counsel for defendant appellee, that designation of the contents of the records on appeal are the only things that need be considered by the Appellate Court.

/s/ CHARLES ELWYN KARPINSKI,
Attorney for Plaintiff Appellant.

LAUGHLIN E. WATERS and
ANDREW J. DAVIS,

/s/ By ANDREW J. DAVIS,

Attorneys for Defendant and
Appellee [48]

[Endorsed]: Filed Feb. 24, 1956.

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME
AND ORDER

Charles Elwyn Karpinski, attorney for plaintiff and appellant in the above entitled action, moves the Court to grant an extension of time in which to file and docket the record on appeal in this matter due to the following facts: the necessity for me to be in Mariposa County for a trial in the Superior Court of that County; and the fact that on January 17, 1956, the designation of contents of record on appeal was sent to Andrew J. Davis, Attorney for defendant and appellee, for his signature which was returned to my office in the morning of February 23, 1956, and therefore said designation of contents of record on appeal could not be filed with this Court in sufficient time for the preparation of the record on appeal.

It is therefore prayed that the Court extend the period for filing on appeal up to and including the 16th day of April, 1956.

Respectfully submitted,

/s/ CHARLES ELWYN KARPINSKI

ORDER EXTENDING TIME

It Is Hereby Ordered that the time for filing and docketing the record on appeal be, and the same is extended to and including the 16th day of April, 1956.

Dated: This 24th day of February, 1956.

/s/ JACOB WEINBERGER,

Judge of the District Court [50]

[Endorsed]: Filed Feb. 24, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 50, inclusive, contain the original

Complaint;

Answer;

Pre-Trial Order;

Trial Memorandum;

Plaintiff's Opening Brief;

Defendant's Reply Brief, Summary of Facts;

Supplemental Stipulation of Facts;

Plaintiff's Cross-Brief;

Plaintiff's Objections to Defendant's Findings of Fact and Conclusions of Law;

Findings of Fact and Conclusions of Law;

Judgment;

Notice of Appeal;

Affidavit of Jean Harrison;

Affidavit of Robert J. Miller;

Statement of Points;

Designation of Contents of Record on Appeal;
Motion for Extension of Time;

which, together with plaintiff's exhibit 1 and joint exhibit 3 and original copy of Findings of Fact and Conclusions of Law that was lodged on November 10, 1955, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that the foregoing record was prepared at expense of \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of the said District Court this 18th day of April, 1956.

[Seal] JOHN A. CHILDRESS,
 Clerk
 /s/ CHARLES E. JONES,
 Deputy

[Endorsed]: No. 15118. United States Court of Appeals for the Ninth Circuit. Mildred Reed Wood, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed: April 19, 1956.

Docketed: May 1, 1956.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 15118

MILDRED REED WOOD, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STIPULATION

It is hereby stipulated by and between Charles Elwyn Karpinski, attorney for Appellant, and Laughlin E. Waters, United States Attorney, by Andrew J. Davis, Assistant United States Attorney, attorneys for Appellee, that the appellant's State-ments of Points and Designation of Contents of Rec-ord On Appeal heretofore filed by appellant and appearing in the typewritten record, be adopted as it appears in the typewritten record.

Dated: This 16th day of May, 1956.

/s/ CHARLES ELWYN KARPINSKI,
Attorney for Appellant

LAUGHLIN E. WATERS and
ANDREW J. DAVIS,

/s/ By ANDREW J. DAVIS,
Attorneys for Appellee

[Endorsed]: Filed May 23, 1956. Paul P. O'Brien,
Clerk.

